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July 18, 1996

EX PARTE OR LATE FILED

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: EX PARTE PRESENTATION - In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 - CC Docket No. 96-98; and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers - CC Docket No. 95-185

Dear Mr. Caton:

On July 18, 1996, on behalf of Paging Network, Inc. ("PageNet"), the undersigned counsel, along with Richard Wiley and Jeffrey Linder of Wiley, Rein & Fielding and Rob Hoggarth and Jay Kitchen of PCIA, met with Blair Levin, Chief of Staff for Chairman Reed E. Hundt, to discuss issues in the above-referenced dockets and the information contained in the attached presentation.

In accordance with the Commission's rules, 47 C.F.R. §1.1206(a)-(b), we are filing an original and two copies of this notice of *ex parte* presentation. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

Judith St. Ledger-Roty

JSLR:cpa
Enclosure

cc: Blair Levin

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MESSAGING CARRIERS ARE ENTITLED TO COMPENSATION, INTERCONNECTION AND TELEPHONE NUMBERS UNDER A FEDERAL PARADIGM

PROCEDURAL BACKGROUND

The FCC has before it two proceedings dealing with co-carrier compensation and more generally, interconnection. Docket No. 95-185 considers compensation for wireless carriers. The Notice of Proposed Rulemaking ("NPRM") in this Docket also considers issues relating to the adequacy and pricing of interconnection of wireless carriers to the public switched network. Docket 95-185 was instituted in accordance with the FCC's authority under Section 332 of the Communications Act, as amended in 1993. (The 1993 revisions to the Communications Act set out a national wireless framework, including the preemption of state wireless rate regulation.)

Docket No. 96-98 was instituted to implement the Telecommunications Act of 1996. This Act removes state and local barriers to local exchange competition and lifts the Consent Decree prohibitions on BOCs provision of long distance and manufacturing. Included in the new Act are provisions giving the states broad authority over interconnection and compensation implementation for telecommunications carriers. The 1996 Act also grants to the FCC exclusive jurisdiction over the North American Numbering Plan (governing the allocation of telephone numbers), but expressly grants the FCC authority to delegate that jurisdiction to the states.

There are five issues of specific interest to messaging carriers under consideration by the FCC in these two proceedings:

ISSUE 1: Given the 1996 Act, the scope of the FCC's authority to deal substantively with issues of compensation and interconnection and, conversely, the degree to which the states have authority over compensation and interconnection.

ANSWER: The FCC continues to have authority over the amounts charged by the CMRS providers (including messaging, cellular and personal communications service) under Section 332 (c)(3) of the Omnibus Reconciliation Act. Section 332(c)(3) of the Act expressly preempts any authority of state or local governments to regulate <u>any</u> <u>rates</u> charged by CMRS providers, including those charged by CMRS providers to LECs for use of CMRS facilities for call termination. Nothing in the 1996 Act overrides this express prohibition on state regulation of CMRS rates charged for use of its facilities.

FCC DETERMINATION NEEDED:

The FCC has jurisdiction over the rates charged to LECs for interconnection under both Sections 332(c)(3) and Section 201 of the Communications Act. Section 251 et seq. does not deprive the FCC of jurisdiction over CMRS providers' interconnection.

ISSUE 2: The degree to which wireless carriers in general, and messaging carriers in particular, are entitled to compensation for termination of LEC traffic, and the level of compensation to which they are entitled.

ANSWER: Messaging carriers are entitled to compensation. For an average 15-second messaging call, compensation to the messaging carrier should be in the range of .0065¢/call. This is based on use of LEC costs as a surrogate, derived from LEC access cost studies. The cost basis is divided into call set up and duration. For call set up the cost is $.005/call, and duration costs equals $.006/minute. Assuming a 15-second average call length, the costs would be $.0065/call. Assuming a 30-second call average length, the costs would be $.008/call.

Those opposed to compensation for messaging carriers argue that, unlike two-way service providers, messaging carriers offer a one-way only service, and should be required to pay for all of the costs associated with the costs of getting the call to the messaging device. This argument fails to recognize that the switching functions for which messaging carriers seek compensation terminate the LEC subscriber's call and thus are the LEC's responsibility, and in every other co-carrier circumstance now contemplated, will be paid for by the LEC who routes the call to the terminating switch. The LEC already has been paid for <u>a</u> <u>completed</u> <u>call</u> by its local exchange subscriber (including switching and call termination now provided by competitive carriers), and thus, failure to pay compensation equates to over-recovery by the LECs. Call revenue to the LEC remains the same, whereas expenses have gone down because they are now incurred by the competitive provider.

FCC DETERMINATION NEEDED:

The FCC needs to clearly reaffirm long-standing co-carrier principles:

- A carrier must be paid for the use of its network.
- Messaging carriers are entitled to termination compensation.

The handling of LEC-originated and/or routed calls by messaging carriers is equivalent to that of independent or the competitive LECs, to whom LECs route calls. This compensation entitlement is not dependent on the degree to which the messaging carrier itself originates traffic and routes it over LEC facilities.

ISSUE 3: The terms and conditions under which messaging carriers are entitled to interconnection.

ANSWER: CMRS providers should only pay a proportion of the transmission facility between the LEC end office and the CMRS provider MTSO, and that proportion should be based on the relative, directional use of the traffic going over the transmission facility. In the one way messaging context, calls originate from LEC premises so the LEC would pay. In the two way environment, both carriers would pay based on the percentage of directional use.

Arguments against this approach suggest that this transmission facility equates to an entrance facility of the IXCs, which is paid for by the IXCs. But CMRS providers <u>are</u> <u>not</u> IXCs. They are co-carriers, with local service areas that encompass the same (or more) of the same geographic areas of the LECs to whom they interconnect. Co-carriers, even those whose service areas do not overlap but intersect, have jointly paid for interconnecting facility based on usage. There is no circumstance, except in messaging, where the co-carrier has been forced to absorb <u>all</u> of the costs.

FCC DETERMINATION NEEDED:

CMRS providers should only pay a proportion of the transmission facility between the LEC end office and the CMRS provider MTSO, and that proportion should be based on the relative, directional use of the traffic going over the transmission facility.

ISSUE 4: Whether CMRS providers should be required to pay for obtaining and using telephone numbers.

ANSWER: The messaging carriers pay exorbitant rates for installing codes of telephone numbers to some telephone companies. Moreover, they pay substantial recurring charges for telephone numbers in many jurisdictions even though there are no recurring costs to the LECs. The new co-carriers, CLECs, are correctly not being assessed these charges; and it is both unreasonable and unreasonably discriminatory to assess them to wireless carriers.

FCC DETERMINATION NEEDED:

The FCC should conclude that wireless carriers are not required to pay any recurring or non-recurring charges for telephone numbers since all facilities-based carriers have to load and maintain telephone numbers in their switches..

ISSUE 5: The extent to which the FCC delegates jurisdiction over the assignment of telephone numbers to the states.

ANSWER: Where area codes exhaust, the FCC must grant to the states the ability to choose which form of relief is appropriate, consistent with the FCC's guidelines as already spelled out. However, the FCC should also set forth timeframes under which the states must consider these issues in order to assure a timely decision.

FCC DETERMINATION NEEDED:

The FCC must retain jurisdiction to assure the timely availability of telephone numbers -- that is, that numbers are allocated in sufficient time to assure that no rationing, no diminution of available numbers, takes place. In this regard, the FCC should specifically set forth timeframes under which the states must consider these issues, and include a default mechanism which keeps numbers flowing in the absence of a state commission determination.

PAGENET IS THE NATION'S AND THE WORLD'S LARGEST MESSAGING CARRIER

OVER 4 BILLION CALLS PER YEAR DOMESTICALLY

7.4 MILLION CUSTOMERS

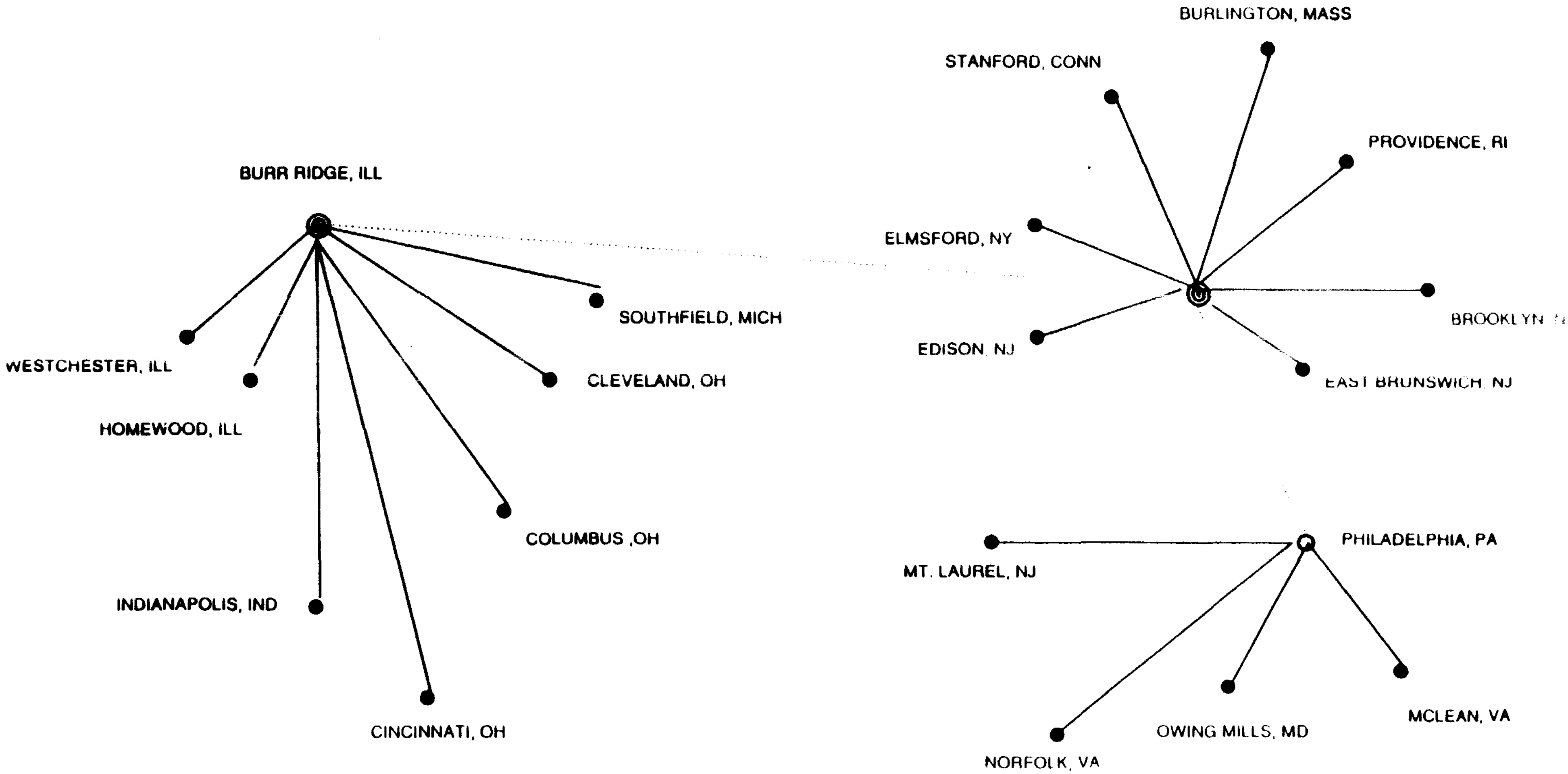
ONE-WAY MESSAGING SERVICES OFFERED BY PAGING CARRIERS	ONE-WAY MESSAGING SERVICES OFFERED BY OTHER WIRELINE & WIRELESS NETWORKS
Traditional Numeric Paging	Caller ID
Alphanumeric	Answering Machines
VoiceNow ("voicemail on your belt")	Voicemail
Wireless Fax	Fax
Wireless Data	Data
Credit Card Verification	Credit Card Verification

MESSAGING TRAFFIC INCREASINGLY PREDOMINANTLY INTERSTATE

- 900 MHz NATIONWIDE, REGIONAL FREQUENCIES
- 900 MHz NARROWBAND FREQUENCIES NATIONWIDE, REGIONAL
- 931 MHz COMMON CARRIER FREQUENCIES TO BE AUCTIONED, MOST LIKELY, ON MTA BASIS - SYSTEMS ALREADY REFLECT MTA OR GREATER GEOGRAPHY

DIAGRAM 1

ILLUSTRATIVE DIAGRAM OF PAGENET INTERSTATE NETWORK



CRITICAL NEED FOR FCC TO ESTABLISH & IMPLEMENT INTERCONNECTION AND COMPENSATION PRINCIPLES FOR MESSAGING TO CURTAIL SYSTEMIC INTERCONNECTION FLAWS

CURRENT PROBLEMS

- INCONSISTENT AND ARBITRARY TREATMENT AMONG LECs
- MESSAGING CARRIERS TREATED LIKE END USERS, NOT CARRIERS
- TREATMENT INFERIOR TO THAT OF OTHER CARRIERS

RESULTS

- OVERCHARGES TO MESSAGING CARRIERS
- COMPETITIVE DISADVANTAGE FOR MESSAGING-ONLY

PAGING CARRIERS ARE SUBJECT TO WIDELY VARYING RECURRING LEC CHARGES

Per-Block of 100 Telephone LEC End Office Numbers

BellSouth	$ 0.50/month
PacBell	$ 0.50/month
US West	$15.00/month
SNET	$52.00/month

THE FCC NEEDS TO CLEARLY REASSERT LONG-STANDING CO-CARRIER PRINCIPLES PROMOTING COMPETITION FOR BENEFIT OF CUSTOMERS

- A CARRIER MUST BE PAID FOR THE USE OF ITS NETWORK
- PAYMENT SHOULD BE BASED ON DIRECTIONALITY (TERMINATING COMPENSATION)
- PAYMENT OF COMPENSATION MUST APPLY TO ALL CARRIERS

CO-CARRIERS INCLUDE:

- LECs
- CLECs
- INDEPENDENTS
- CMRS
  - Cellular
  - Messaging/Paging
  - ESMR
  - Other

APPLICATION OF POLICY CONSISTENTLY APPLIED, TRANSLATES INTO:

- Facility Paid For Based On "Proportionate Use"
- There Should Be No Charges To Wireless Carrier For inter-Carrier Trunk Facility Between LEC And MTSO If 100% Of Traffic From LEC To Wireless Carrier
- Example: Bell Atlantic Cellular Tariff Charges Cellular Carrier For Mobile-To-Land But Not Land-To-Mobile
  - ◊ Bell Atlantic Refuses To Give PageNet Same Terms

CHARGES TO MESSAGING CARRIERS FOR FACILITIES BASED ON OTHER THAN PROPORTIONATE USE IN EACH DIRECTION IS AN UNREASONABLE PRACTICE UNDER SECTION 201 OF THE COMMUNICATIONS ACT

COMPENSATION TO MESSAGING CARRIERS FOR TRAFFIC TERMINATED OVER THEIR NETWORKS

EXAMPLE:

NYNEX Offering Compensation To Cellular For Calls Terminated Over Cellular Career Networks

NYNEX Pays CLECs For All Calls Terminated Over CLEC Network

NYNEX Pays Independent LECs For Calls Terminated Over Their Networks

NYNEX Refuses To Pay Messaging Carriers For Calls Terminated Over Their Networks

CHARGES BY CMRS CARRIERS TO LECs FOR USE OF CMRS FACILITIES ARE RATES

SECTION 332 PROHIBITS STATES FROM SETTING THESE RATES

(LECs WOULD LIKE TO PRETEND THAT THESE CHARGES ARE DISCOUNTED OFF LEC SERVICES)

FACT THAT LECs ARE ATTEMPTING TO DETERMINE INTERCARRIER RATES PAID TO WIRELESS CARRIERS (COMPENSATION RATES) POINTS UP GROSS, ONGOING LEVERAGE IMBALANCE;

FCC ARTICULATION OF COMPENSATION REQUIREMENTS NEEDED TO OFFSET IMBALANCE IN LEVERAGE

Paging Network, Inc.

FAILURE OF LECs TO PAY MESSAGING CARRIERS FOR USE OF MESSAGING NETWORK

- UNREASONABLE PRACTICE UNDER SECTION 201(b)
- UNREASONABLY DISCRIMINATORY PRACTICE UNDER SECTION 202(a) TO EXTENT THAT PAY CELLULAR, PCS, CLEC, INDEPENDENTS FOR TRAFFIC THAT TERMINATES OVER THEIR RESPECTIVE NETWORKS

RECOMMENDED RATE

BASIS

- USE PER-CALL RATE BECAUSE PAGING TRAFFIC UNIFORM
- SIMPLICITY
- USE LEC COST AS SURROGATE
- DERIVE FROM ACCESS COST STUDY - AVAILABLE, CONSISTENT

COST BASIS

- SET UP COST .5¢/CALL
- DURATION COST .6¢/MINUTE

RESULT

- ASSUMING 15-SECOND AVERAGE LENGTH: .65¢/CALL
- ASSUMING 30-SECOND AVERAGE LENGTH: .80¢/CALL

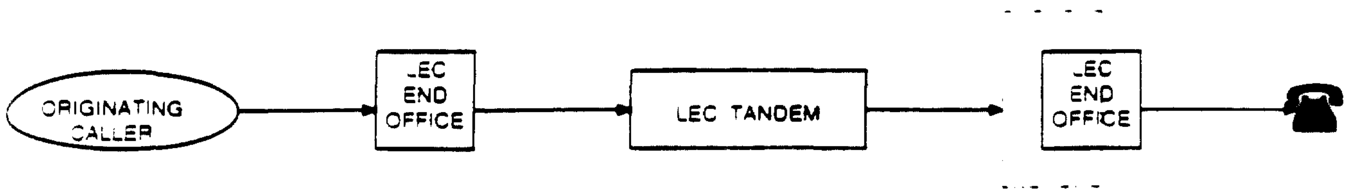
NATIONAL POLICIES

- COMPENSATION
- EFFICIENT CONSISTENCY
- PRO-COMPETITION

DIAGRAM C

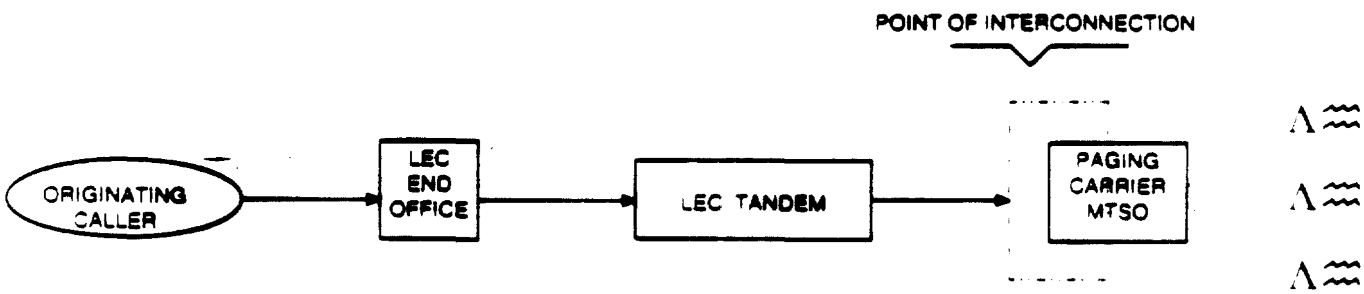
CALL ROUTING AND COST COVERAGE BY LEC

LEC-PROVIDED TERMINATION -- LOCAL CALL



1
COSTS COVERED BY LEC CHARGES TO END USERS

PAGING CARRIER TERMINATION -- LOCAL CALL

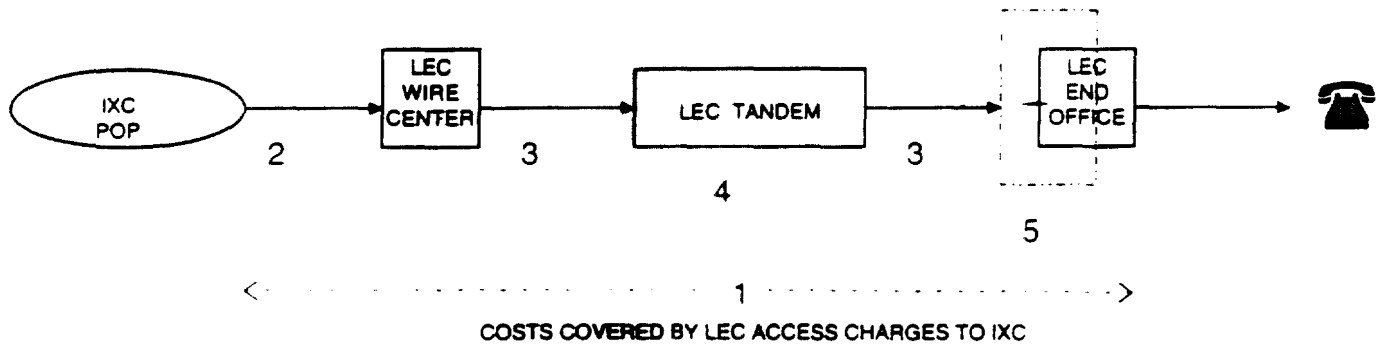


1
COSTS COVERED BY LEC CHARGES TO END USERS

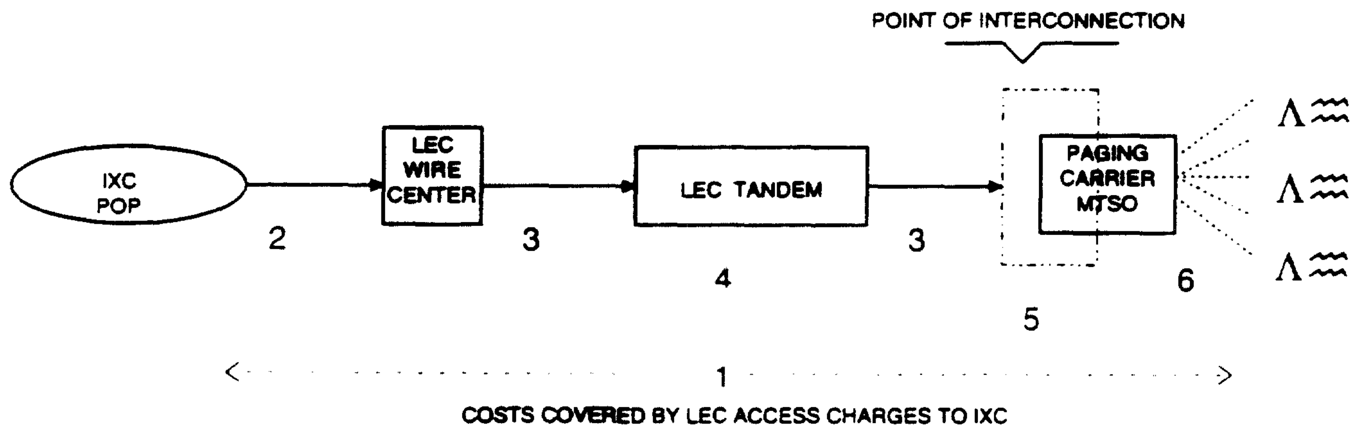
1 = LEC Basic Local Service Flat Rate

CALL ROUTING AND COST COVERAGE BY LEC

LEC-PROVIDED TERMINATION -- LONG DISTANCE CALL



PAGING CARRIER TERMINATION -- LONG DISTANCE CALL



2 = LEC Entrance Facility
3 = LEC Tandem Switched Transport
4 = LEC Tandem Switching
5 = LEC Terminating Local Switching
6 = Paging Carrier switching and local transport functions and charges